

Challenges of Corruption and Good Governance: A Human Rights Perspective

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Abstract. Corruption violates human rights, undermines the rule of law, distorts the development process, and dis-empowers the Indian state. Corruption violates human rights of the people of India as it hinders the process of fulfilling civil, political, economic, social and cultural rights. The paper discusses the relationship between corruption and human rights and to what extent domestic law and international law, including human rights ought to influence national efforts in the fight against corruption. It critically examines from a human rights perspective the legal and institutional approaches in the fight against corruption and its implications for public policy and governance reforms.

Keywords: Corruption, Good Governance, Human Rights.

1. Introduction

The very concept of 'Government of the people, for the people and by the people' puts human beings at the centre stage and unless the State makes Human Rights its focal point, it cannot provide good governance. Democratic governance refers to the management of societal affairs in accordance with the universal principles of democracy as a system of rule that maximizes popular consent and participation, the legitimacy and accountability of rulers, and the responsiveness of the latter to the expressed interests and needs of the public.

It is now well-accepted that the State is primarily responsible for both formulating and enforcing policies relating to good governance and human rights. Unless human rights are made the focal point, good governance would remain only a distant dream. The rule of law is a higher ideal and it must be recognized by those governing the State that adherence to the rule of law is *sine-quo-non* of any society that hopes to have stability and peace and achieve social equality.

2. After Independence

Leaders of the movement for Independence in India were aware of the enormous inequities and injustices in the society. On the attainment of Independence in 1947, they had the choice to adopt governance either by an authoritarian rule or through the Rule of Law and constitutionalism of the Western Model. In framing our Constitution, our Founding Fathers made a conscious and deliberate choice to adopt democracy or rather the democratic way of life as the basis of our Constitution. They were committed to the protection and promotion of human rights and incorporated the same as Fundamental Rights in Part-III of our Constitution and made them enforceable by an independent judiciary.

On 26th of November, 1949, our Founding Fathers accomplished the challenging task of framing a Constitution for free India. WE THE PEOPLE OF INDIA resolved to give to ourselves the Constitution aimed at securing for all its citizens - Justice, social, economic and political; Equality of status and opportunity, besides Liberty of thought, expression, belief, faith and worship and Fraternity. The Founding Fathers were conscious of the need to provide for real freedom for each of its citizens. Civil and Political Rights were, therefore, incorporated in the Constitution as Fundamental Rights in Part-III and made enforceable. The rationale underlying these Rights being that human rights flow from the common humanity and inherent dignity of every human being irrespective of race, religion, caste, color, gender or status and these inhere in all human beings by reason of his/her birth as a member of the human family. These rights are not negotiable and no compromise with their violation is permissible.

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In Part-IV of the Constitution, with the aim of creating a Welfare State, Economic, Social and Cultural Rights were enshrined as Directive Principles of the State Policy. Dr. B.R. Ambedkar, Chairman of the Constitution Drafting Committee, while explaining the nature of Directive Principles, opined that they would be the 'Guiding Principles of Governance'. The inter-dependence of both sets of rights is essential for full development of human personality. Governments have so far contented themselves by chalking out only strategies for promotion of economic and social rights. Even those strategies have hardly borne any fruits because of rampant corruption in implementing the same. Millions of people in this country live in a state of abject poverty, without food, shelter, employment, health care and education.

Human rights have traditionally been understood to be rights relating to life, liberty, equality, and dignity. In the Indian context, Section 2(d) of the Protection of Human Rights Act, 1993, has defined "human rights" to mean, "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." The preamble to The Right to Information Act, 2005, notes the specific issue of corruption: "... And whereas democracy requires an informed citizen and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed..." Further, human rights in India have also been given a strong constitutional foundation and have developed through innovative judicial interventions over more than five decades.

3. Good Governance and Development of Human Rights by Curbing Corruption

Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. On the other hand, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.

The good governance agenda includes protection and promotion of human rights and rule of law. Both these functions will not be fully accomplished if corruption is rampant in government. It is important that institutions like the NHRC (National Human Rights Commission) provide a framework to take up cases of corrupt acts of individuals and institutions that result in human rights violations. The NHRC should attempt to understand the implications of corruption for human rights not only from a theoretical perspective but also from a practical standpoint. It is useful to examine how many of the various cases that come before the NHRC are due to some act of bribery or other forms of corruption. Further, the NHRC's research division may consider supporting studies on both the human rights consequences of corruption and how far the human rights discourse can help in ensuring corruption-free governance.

However, what really matters is the effectiveness of this institution for ensuring access to justice. Access to justice cannot be achieved in Indian society without eliminating corruption, since the role of the state and its instrumentalities continues to be significant when it comes to formulating and implementing policies. The Indian citizenry continues to be hugely dependent upon the government and the powers that it exercises, which are inevitably characterized by corruption.

Corruption is a potent violator of human rights, particularly the economic and social rights of individuals as well as those of the State. It not only undermines development and growth, it also inhibits efforts aimed at poverty eradication, socio-economic transformation and creation of an egalitarian society in accordance with the Directive Principles of the State Policy. Corruption inhibits enjoyment of human rights. It has become all pervasive and is eating into the vitals of the society. It directly contributes to inequalities in income, status and opportunities. It remains one of the biggest threats to 'full human development' and 'human rights for all'. It undermines the Rule of Law. It distorts the development process and also poses a grave threat to human security. Corruption is not a new phenomenon. What is new and worrying is the magnitude and size of corruption. It has spread its tentacles to every sphere of national life. It is one of the biggest threats to development. It can tear the very fabric of the society and, in fact, it is doing so. Corruption benefits the rich and the well-to-do. It enriches the rich and disproportionately affects the poor, unprotected and the

underprivileged and thereby it deepens their deprivation. Unless it is checked, the governments and people will have to pay a very heavy price in the consequent result of lower incomes, lower investments and lower developments resulting in volatile economic swings. It is high time that we appreciate an urgent need to combat the deadly menace which poses a threat to the democratic fabric of our nation. It is unfortunate, but true, that growing politicization of public services and criminalization of politics have contributed in no small measure to let corruption flourish and the corrupt not only go scot-free but even earn a position of false respectability!

The right to Corruption-free constitutional governance, the recognition of the right to corruption-free governance by the NHRC has the potential to bring the problem of corruption to the centre of the political discourse. This will ensure that the state and all its instrumentalities act in accordance with the Constitution and do not engage in any form of corrupt actions that will violate the fundamental rights of the Indian citizenry. This would require governance to be based upon the underlying ideals, goals, objectives, aspirations, and values of the Constitution. Unfortunately, corruption has undermined all these constitutional values. All individuals and institutions within the government would be expected to take the necessary steps to fulfill this fundamental right.

Empowering the judiciary and other institutions, the recognition of the right to corruption-free governance will quickly empower the judiciary to bring forward the integration of the anti-corruption discourse and the human rights discourse. Both these discourses are about increasing the legitimacy of the state and ensuring accountability of the administration. The judiciary is best suited to continue this role as it has attempted in the past to create greater transparency and infuse institutional autonomy and independence in investigative agencies engaged in anti-corruption work. With the development of such a human right by the NHRC, the judiciary is in a far better position to develop jurisprudence relating to good governance.

Galvanizing social consciousness, the development of the human right to corruption-free governance will help in galvanizing social consciousness on issues relating to bribery and other forms of corruption. It is necessary for the NHRC to garner the support of the citizens, as it is their apathy and indifference to abuse of power that has resulted in corruption becoming institutionalized in India. Political morality cannot be brought about without the development of individual morality. The particular right can help in creating greater support for corruption-free governance and also result in the citizens valuing integrity and rectitude as important criteria for electing their representatives. At the same time citizens will feel a greater sense of urgency in reporting on corrupt activity.

Internationally, the world community has been concerned about the growing phenomenon of corruption. With a view to launch a global war against it, United Nations' Convention against Corruption, adopted by the General Assembly on October 31, 2003, came into force on 14th December, 2005 with the 30th ratification of the Instrument. The Instrument, after its adoption in 2003, was open for signatures till December 9, 2005. India was perhaps one of the last member States to sign it, though ratification is yet to be announced. This Convention deals with crucial aspects of corruption. It is a significant step towards meeting the challenge of corruption. Let India not delay joining the global war.

From a human rights perspective, the concept of good governance can be linked to principles and rights set out in the main international human rights instruments. Article 21 of the Universal Declaration of Human Rights recognizes the importance of a participatory government and article 28 states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. The two International Covenants on Human Rights contain language that is more specific about the duties and role of governments in securing the respect for and realization of all human rights. Article 2 of the International Covenant on Civil and Political Rights requires states parties to respect and to ensure the rights recognized in the Covenant and to take the necessary steps to give effect to those rights. In particular, states should provide an effective remedy to individuals when their rights are violated, and provide a fair and effective judicial or administrative mechanism for the determination of individual rights or the violation thereof. Under the International Covenant on Economic, Social and Cultural Rights, states are obliged to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means.

We have cried ourselves hoarse about the persistent evil effects of corruption and talked about it, yet it flourishes with impunity. The need of the hour is to bring about a change in our political morality and society's sense of values. We need to ensure that certain basic values like integrity and honesty are inculcated in our education system itself. What is more unfortunate, today, is the growing tolerance and our acceptance

of corruption as an inevitable and integral part of the civil society. Unless an alert and active citizenry adopts zero-tolerance to corruption and shuns the corrupt, it may not be possible to meet the challenge with any amount of sincerity. Remedy, therefore, to a large extent, lies with us - WE THE PEOPLE.

4. Conclusions

Citizens' obligation in a democracy is not discharged by the exercise of franchise once in five years and thereafter retiring in passivity and not taking any interest in the working of the government. An alert and active and educated citizenry is essential to meet the challenges to democracy and to ensure its successful functioning. Accountability is a *sine-qua-non* of democracy because as Benjamin Disraeli rightly reminds us "*all power is a trust - which we are accountable for its exercise that, from the people and for the people, all springs, and all must exit*". This accountability is to be enforced not merely at the time of elections but during the life of the government in power. Otherwise democracy will become merely a ritualistic exercise in voting and not a continuous process of democratic governance.

The human rights approach to the corruption control mechanism makes the people of India central players in the corruption resistance movement. The law enforcement work of the government to ensure corruption-free governance ought to be perceived as a part of the right of the people of India to seek a corruption-free government. Concomitantly, it becomes the duty of the government to ensure that all its affairs are conducted in a manner which promotes transparency, accountability, and integrity in public administration. There is a need to establish constitutional governance in India, as it is an important dimension of the rule-of-law framework. If this framework has to work in the context of various social, economic, and political transitions that occur in India, the anti-corruption initiatives should be integrated with the human rights discourse, and collaborations should be undertaken with countries that have successfully managed to curb the menace of corruption to a large extent.

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